

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
SKYPORT GLOBAL COMMUNICATIONS, INC., Debtor	§	CASE NO. 08-36737-H4-11
JOANNE SCHERMERHORN, ET AL., Plaintiffs	§	
v.	§	ADVERSARY NO. 10-03150
CENTURYTEL, INC. (A/K/A CENTURYLINK), ET AL., Defendants	§	
SKYPORT GLOBAL COMMUNICATIONS, INC., ET AL., Plaintiffs	§	ADVERSARY NO. 10-03225
v.	§	
JOANNE SCHERMERHORN, ET AL., Defendants	§	(CONSOLIDATED UNDER ADVERSARY NO. 10-03150)

PLAINTIFFS' AMENDED MOTION TO SUPPLEMENT THE RECORD

NOTICE PURSUANT TO LOCAL RULE 9013

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED.

IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

The above-captioned Plaintiffs, Joanne Schermerhorn, et al., (the "Schermerhorn Parties"), in Adversary Proceeding No. 10-03150 (also Defendants in Adversary Proceeding No. 10-03225), file this amended motion to supplement the record of the hearing before this Court held on May 27, 2010, and in support thereof states as follows:

1. At the hearing before this Court on May 27, 2010 on the removal and requested remand of this action, one of the witnesses, Bill B. McCrary, mentioned on cross-examination a two page memorandum he had written about his concerns regarding SkyComm. Mr. McCrary did not refer to this memorandum in his direct testimony. He did not have a copy of the memorandum at the hearing and it was not introduced into evidence at the hearing.

2. This memorandum, however, turned out to have a critical role in the Court's ruling at the hearing; the Court cited the memorandum several times as proof that Mr. McCrary had suspicions about Kubberns' fraudulent conduct before the SkyPort bankruptcy plan was confirmed in August 2009, but did not raise those concerns in the SkyPort bankruptcy proceeding. See Transcript of Hearing held on May 27, 2010 before Hon. Jeff Bohm at 273, 279, 285 and 293.

3. However, as can be seen by examining the memorandum and the accompanying Declaration of Bill B. McCrary, annexed hereto as Exhibit 1, the memorandum was written in October 2007, one year before the SkyPort bankruptcy proceeding was filed, and concerned events occurring in 2005 and 2006. It had nothing to do with any suspicions by Mr. McCrary that Kubberns had committed fraud, but rather dealt with Mr. McCrary's concerns about defendant CenturyTel Inc.'s actions in 2005 and 2006.

4. The memorandum was provided by Mr. McCrary to Mr. Goldman at the end of January 2010, almost half a year after the entry of the order confirming the Chapter 11 plan in the SkyPort bankruptcy proceeding. The McCray Declaration explains this and places the memorandum in context in relation to the issues before the Court.¹

5. The evidentiary significance of this memorandum is that it does not evidence Plaintiffs' knowledge or suspicion of Kubbernus' fraud during the pendency of the SkyPort bankruptcy proceeding. Rather, the memorandum is consistent with plaintiffs' contention that they did not know of or suspect Kubbernus' fraud until after the Chapter 11 plan was confirmed.

6. The Court has not yet issued its written decision or order in this case. Supplementing the record to include the memorandum and McCrary Declaration will assist the Court by providing a more complete record of the facts relevant to this issues at bar.

WHEREFORE, Plaintiffs respectfully request that the Court exercise its discretion by granting this motion and accepting the annexed Exhibits as supplements to the evidence before the Court at the May 27, 2010 hearing.

Dated: July 1, 2010

¹ Plaintiffs will produce Mr. McCrary for cross-examination, should defendants require cross-examination.

Respectfully submitted,

McFALL, BREITBEIL & SHULTS, P.C.

By: /s/ W. Steve Smith
W. STEVE SMITH
State Bar No. 18700000
1331 Lamar Street, Suite 1250
Houston, Texas 77010
Tel. 713-590-9300
Fax. 713-590-9399
Email: ssmith@mcfall-law.com

THE FRYAR LAW FIRM

By: /s/ Eric Fryar
F. ERIC FRYAR
State Bar No. 07495770
1001 Texas Ave., Suite 1400
Houston, Texas 77002
Tel. (888) 481-9995
(281) 715-6396
Main Fax: (281) 715-6397
Direct Fax: (281) 605-1888
Email: efryar@fryarlawfirm.com

SAMUEL GOLDMAN & ASSOC.

By: /s/ Samuel Goldman
SAMUEL GOLDMAN
100 Park Ave., 20th Fl.
New York, NY 10017
Tel. (212) 725-1400
Fax. (212) 725-0805
Email: sg@sgalaw.com

HAROLD B. OBSTFELD, P.C.

By: /s/ Harold B. Obstfeld

HAROLD B. OBSTFELD
100 Park Ave., 20th Floor
New York, NY 10017
Tel. (212) 696-1212
Fax. (212) 867-7360
Email: hobsd@erols.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document is being served on the 1st day of July, 2010, on all of the following parties via regular first class mail, postage prepaid. Those ECF users registered in this case will receive electronic notice on July 1, 2010.

Office of U.S. Trustee
515 Rusk Ave., Ste. 3516
Houston, TX 77002

Hugh M. Ray, III
McKool Smith, P.C.
600 Travis, Suite 7000
Houston, TX 77002

Robert M. Manley
McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201

Edward L. Rothberg
Hoover Slovacek, L.P.
5847 San Felipe, Ste. 2200
Houston, TX 77057

David R. Jones
Elizabeth Freeman
Porter & Hedges, LLP
1000 Main Street, 36th Fl.
Houston, TX 77002
(Subject to Special Appearance)

Wilson Vukelich, LLP
Valleywood Corporate Centre
60 Columbia Way, Suite 710
Markham, Ontario L3R 0C9
CANADA

/s/ W. Steve Smith

W. Steve Smith